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# UNITED STATES DISTRICT COURT
for the
EASTERN DISTRICT OF PENNSYLVANIA

11 0405

Richard P. Glunk, MD, *pro se*
209 Spring Rd.
Malvern, PA 19355

Plaintiff

v.

CIVIL ACTION NO.

Main Line Hospitals, Inc.
950 Haverford Rd.
Bryn Mawr, PA 19010-3850

Defendant

and

Main Line Health, Inc.
950 Haverford Rd.
Bryn Mawr, PA 19010-3850

Defendant

and

John J. Lynch, III
130 S. Bryn Mawr Ave.
Bryn Mawr, PA 19010

Defendant

and

John J. Hobson, MD
130 S. Bryn Mawr Ave.
Bryn Mawr, PA 19010

Defendant

FILED
JAN 21 2011
MICHAEL E. KUNZ, Clerk
By__________Dep. Clerk

TITLE: PLAINTIFFS' EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION FOR A STAY OF RELINQUISHMENT OF MEDICAL STAFF PRIVILEGES AND MEMBERSHIP

1) Plaintiff respectfully requests this motion be filed under seal.

INTRODUCTION

This Motion for Temporary Restraining Order and Preliminary Injunction is filed because of Defendants' deliberate violations of Plaintiff's constitutional rights to due process under U.S.Constitution Amendment. XIV. The violation was revoking Plaintiff's protected interest in his medical staff privileges without notice or a hearing.

Plaintiff RICHARD P. GLUNK, M.D., F.A.C.S., Pro Se, through Rule 65 of the Federal Rules of Civil Procedure, moves this Court for:

2) An order temporarily requiring that Defendants reinstate Plaintiff's medical staff privileges; and

3) An order providing a Preliminary Injunction requiring that Defendants reinstate Plaintiff's medical staff privileges.

PARTIES

4) At all relevant times, Plaintiff, Richard P. Glunk, M.D., F.A.C.S. is a United States citizen who is domiciled in the Commonwealth of Pennsylvania.

5) At all relevant times herein, Defendant Main Line Hospitals, Inc., is a corporation with a Federal Tax ID # 231352160 and its main office located in the Commonwealth of Pennsylvania.

6) At all relevant times herein, Defendant Main Line Health, Inc., is a corporation with a Federal Tax ID # 232331531 and its main office located in the Commonwealth of Pennsylvania.

7) Upon information and belief, Defendant John J. Lynch, III, is a resident of the Commonwealth of Pennsylvania, and at all times relevant herein is the Chief Executive Officer and an employee of Defendant Main Line Health, Inc.

8) Upon information and belief, Defendant John J. Hobson, MD, is a resident of the Commonwealth of Pennsylvania, and at all times relevant herein is the Chairman of the Medical Executive Committee and an employee of Defendant Main Line Health, Inc.

JURISDICTION AND VENUE

9) This action arises under the XIV Amendment of the U.S. Constitution.

10) Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1331 as Defendants violated the U.S. Constitution.

11) Venue is properly conferred on this Court pursuant to 28 U.S.C. § 1391 because Defendants are subject to personal jurisdiction in this District and because of a substantial part of events giving rise to the claims alleged herein took place in this District.

FACTUAL BACKGROUND

12) Plaintiff is licensed to practice medicine by the National Board of Medical Examiners, the Commonwealth of Pennsylvania Board Of Medicine, the State of Delaware Board of Medical Licensure and Discipline, the State of Maryland Board of Physicians, the State of New Jersey Board of Medical Examiners, and the State of New York Board of Medicine.

13) Plaintiff is certified in the specialty of Plastic and Reconstructive Surgery from the American Board of Plastic Surgery, Inc.

14) Plaintiff had medical staff privileges at Main Line Health (MLH) continuously from December 1987 until December 13, 2010 when Defendant Lynch abruptly and illegally advised him of an immediate and automatic relinquishment of Plaintiff's medical staff privileges at MLH "because the State Board of Medicine has taken an action suspending your[Plaintiff's] medical license" without providing an opportunity for a Fair Hearing, effective December 13, 2010 citing the MLH Medical Staff Bylaws Section 4.E.terminated after 23 years.

15) On December 13, 2010 Defendant Lynch sent a letter to Plaintiff.

16) The suspension of medical license was the sole reason stated by Defendants for the automatic relinquishment of Plaintiff's medical staff privileges.

17) The suspension of Plaintiff's medical license had not and may never occur.

18) On December 21, 2010, Plaintiff requested Defendants to rescind their decision to revoke Plaintiff's medical privileges based on the fact that Defendants violated their own MLH bylaws. In Pennsylvania, the requirement for the content of medical staff bylaws, rules and regulations is set forth in 28 Pa.Code § 107.12. That section requires that fair hearing and appellate review mechanisms be provided. This requirement comports with the Federal Act.

28 Pa. Code § 107.12.(4) reads as follows:

Appeals. The bylaws shall provide for the establishment of fair hearing and appellate review mechanisms, which will be available if requested by the practitioner in connection with medical staff recommendations for denial of staff appointments, as well as the denial of reappointments, or the curtailment, suspension or revocation of privileges. It is recognized that the mechanism for individuals applying for initial medical staff appointments or privileges may differ from that which is applicable to medical staff members.

19) Section 4.E.2 of MLH Medical Staff Bylaws in its entirety is as follows: "Action by the appropriate state licensing **BOARD** or agency revoking or suspending an individual's professional license, or loss or lapse of state license to practice for

any reason, shall result in automatic relinquishment of membership and all hospital clinical privileges as of that date, until the matter is resolved, and an application for reinstatement of membership and privileges has been approved by the MLH Credentials Committee and the MLH Quality and Patient Safety Committee. In the event the individual's license is only partially restricted, the clinical privileges that would be affected by the license restriction shall be similarly restricted."

20) Section 4.E of MLH Medical Staff Bylaws states:

"Except as specifically provided otherwise, the automatic relinquishment of medical staff appointment and privileges described in this Section should occur after the Chair or the Vice Chair of the MLH Medical Executive Committee has confirmed the underlying facts contributing to such actions".

21) Defendant, John Hobson, Chair of the MLH Medical Executive Committee could not have confirmed a suspension because it has never occurred.

22) Only if the suspension of Plaintiff's medical license actually occurs would Section 4.E of the medical staff bylaws apply. Otherwise, there should be no automatic relinquishment of Plaintiff's medical staff privileges.

23) Plaintiff's medical staff privileges constituted a protected interest under Pennsylvania state law.

24) The Fourteenth Amendment to the U.S. Constitution secures certain rights, such as the right to due process, for U.S. citizens.

25) As such, a suspension of medical staff privileges may only be limited or revoked after proper due process has been afforded the physician, instilling a Fourteenth Amendment protected property right in the Plaintiff's medical staff privileges.

26) Defendants relied on the decision of one Hearing Examiner (Joyce McKeever), not the State BOARD, to suspend Plaintiff's medical license to terminate Plaintiff's medical staff privileges. The suspension has never occurred.

27) Plaintiff is currently contesting the legality of the Hearing Examiner to suspend Plaintiff's medical license.

28) On December 21, 2010 Plaintiff's insurance counsel wrote to Defendant Lynch and reminded him that the Hearing Examiner did not enter her Order of December 2, 2010 based upon an alleged "standard of care" violation and her findings do not give rise to any implication that Plaintiff's licensed exercise of MLH privileges will result in an imminent danger to the health or safety of any individual or to the continued effective operation of the Main Line Hospitals. Plaintiff's license has never been suspended. As such, Defendants violated Plaintiff's rights to due

process by denying him a fair hearing according to MLH Bylaws as well as state and federal law.

29) On January 4, 2011, Plaintiff received a signed copy of Order Granting Temporary Stay of the suspension of his medical license, dated December 28, 2010.

30) Plaintiff notified Defendant Main Line Health, Inc. on January 6, 2011 (Exhibit A) that he was granted an Order Granting Temporary Stay of the suspension of his medical license on December 28, 2010. Thus, Plaintiff has no suspension, lapse or loss of his medical license. Plaintiff requested a due process hearing regarding Defendants' abrupt and illegal termination of Plaintiff's medical staff privileges.

31) Defendants through their counsel denied Plaintiff his rights to due process in their letter dated January 11, 2011 (Exhibit B). Defendants had a total disregard for Plaintiff's constitutional rights and his rights to due process. Defendants specifically denied Plaintiffs due process right to a fair hearing. Defendants' own words stated "the action by the State **BOARD** ....was sufficient to trigger the automatic relinquishment of Dr. Glunk's privileges". Defendants refused to acknowledge the "action" was **not from the State BOARD**, but from one Hearing Examiner and that the suspension was stayed and therefore never occurred.

32) Thus, Defendants intentionally violated MLH Medical Staff Bylaws Section 4.E as well as 28 Pa.Code § 107.12 (4) and Plaintiff's constitutional rights of 14th Amendment and his rights to due process by terminating Plaintiff's medical staff privileges without notice or a hearing.

33) Plaintiff performed his surgeries at the Main Line Health hospitals: Bryn Mawr Hospital, Lankenau Hospital and Paoli Hospital for the last 23 years.

34) Plaintiff is not on the staff of any other hospital.

35) Defendants' termination of Plaintiff's medical staff privileges will likely make it impossible for Plaintiff to obtain the same privileges at other hospitals to which Plaintiff will apply.

36) Plaintiff continues to suffer substantial economic and reputational harm as a result of the Defendants' actions.

37) The private interest at stake here is Plaintiffs ability to practice medicine at Main Line Hospitals and/or other hospitals.

38) The risk of an erroneous deprivation is also significant, as an improper termination of Plaintiff's medical staff privileges would have dramatic consequences for the Plaintiff's life, livelihood and career.

39) Plaintiff has surgeries already scheduled at Defendants' hospitals that will need to be canceled if Plaintiff's privileges are not immediately restored. By improperly and illegally terminating Plaintiff's medical staff privileges, Defendants do not only deprive Plaintiff of his rights to the due process of law but also depriving Plaintiff's patients of having their surgeries done at Main Line Hospitals.

LEGAL ARGUMENT

A. THE STANDARD FOR GRANTING A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUCTION

1. A Fair Chance of Success on the Merits

Plaintiff had been granted medical staff privileges at Defendant Main Line Health Hospital, Inc for the last 23 years. Plaintiff has a vested property interest that directly relates to the pursuit of his livelihood. Defendants' abrupt and illegal termination of Plaintiff's medical staff privileges at MLH without a fair hearing violated Plaintiff's due process rights pursuant to 28 Pa. Code § 107.12.(4) and U.S. Const. Amend. XIV. Based on the foregoing, Plaintiff strongly believes that there is a great likelihood of success on the merits.

2. A Significant Threat of Irreparable Injury.

Defendants' illegal revocation of Plaintiff's medical staff privileges at MLH without a fair hearing makes it impossible for Plaintiff to obtain the same privileges at other hospitals. Plaintiff is not on staff at any hospital at this point. As such, improper revocation of Plaintiff's medical staff privileges without due process of law has dramatic and irreversible consequences for Plaintiff's career, reputation, life and livelihood.

3. The Risk of Irreparable Injury to Plaintiff If the Temporary Restraining Order and Preliminary Injunction Is Denied Must Exceed the Foreseeable Hardship to Defendant If It Is Granted.

Plaintiff had medical staff privileges at MLH for the last 23 years. Plaintiff's licensed exercise of MLH privileges did not and will not result in an imminent danger to the health or safety of any individual or to the continued effective operation of the Main Line Hospitals. Plaintiff's reinstatement of privileges will have no untoward or negative effects on Defendants. Plaintiff's reinstatement of privileges would not subject the Defendants to any perceived injury. In contrary, Plaintiff would suffer irreparable injury as stated above if the temporary restraining order and preliminary injunction is denied.

4. Public Interest Favors the Granting of the Injunction.

Plaintiff's licensed exercise of MLH privileges did not and will not result in an imminent danger to the health or safety of any individual or to the continued effective operation of the Main Line Hospitals. In contrary, Plaintiff had provided emergency services for the public in the Defendants' emergency rooms for the last 23 years. Defendants' illegal revocation of Plaintiff's medical staff privileges deprives his patients and potential patients of his services.

B. TIME IS OF THE ESSENCE

Plaintiff respectfully requests this Honorable Court to take immediate action to grant him the temporary restraining order and preliminary injunction. Any delay will jeopardize Plaintiff's ability to prevent serious and permanent injury to his livelihood, career, and reputation.

CONCLUSION

Plaintiff believes that he has met the requirements necessary for this Honorable Court to grant him a temporary restraining order and preliminary injunctive relief requiring Defendants to immediately reinstate Plaintiff's privileges as Plaintiff is entitled to his rights to due process of law. Plaintiff respectfully requests this Honorable Court to grant him immediate temporary restraining order and preliminary injunctive relief to prevent the Defendants from causing further damage to the Plaintiff's professional reputation, career, life and livelihood.

Dated: January 21, 2011

Respectfully Submitted,

Richard P. Glunk, MD

Richard P. Glunk, M.D.
Pro Se
209 Spring Road
Malvern, PA 19355
drglunk@verizon.net
610-213-5566

VERIFICATION

I declare under penalty of perjury that the statements made in this **Plaintiffs' Emergency Motion for Temporary Restraining Order and Preliminary Injunction for a Stay of Relinquishment of Medical Staff Privileges and Membership** are true and correct to the best of my knowledge, and belief.

Date: January 21, 2011

Richard P. Glunk, M.D.

Richard P. Glunk, M.D., *Pro Se*
209 Spring Road
Malvern, PA 19355
drglunk@verizon.net
610-213-5566

EXHIBIT A

PENNA, GRABOIS & ASSOC., LLC

ATTORNEYS AND COUNSELORS AT LAW

166 EAST BUTLER AVENUE
AMBLER, PA 19002
(215) 643-7866
FAX (215) 643-4533

January 6, 2011

Henry F. Siedzikowski, Esquire
925 Harvest Drive
Blue Bell, PA 19422

Re: Dr. Richard Glunk

Dear Mr. Siedzikowski:

I apologize for having sent my letter of December 22, 2010 directly to your client. I had not been aware that your client was represented by counsel in this matter. I was responding to a letter from your client to Dr. Glunk that did not in any way reference counsel on the part of your client.

Please find enclosed a copy of the Order dated December 28, 2010 from State Board of Medicine Hearing Examiner Suzanne Rauer issuing a 30 day Stay of the Hearing Examiner's Order (Joyce McKeever) that had ordered temporarily suspension of the medical license of Dr. Richard Glunk as of January 3, 2011.

Since Dr. Glunk's medical license still remains active, it is incumbent upon your client, Main Line Health Care, to immediately rescind its termination of Dr. Glunk's hospital clinical privileges. This Stay Order further clarifies the logic of the contention raised in my letter of December 22, 2010. There has not been a suspension or revocation of Dr. Glunk's medical license, and therefore the automatic termination of MLH privileges under Section 4.E.2 of the Bylaws, without any due process hearing, was improper.

I also wish to point out that, contrary to your comment in your letter of December 29, 2010, this termination cannot have been related to any patient safety issues arising from the Superior Court having affirmed a 2008 malpractice award against Dr. Glunk. The circumstances of that judicial award had already been the subject of an MLH due process inquiry on the issue of Dr. Glunk's clinical privileges. In that earlier proceeding under the Bylaws, Dr. Glunk had satisfied MLH that his exercise of continued privileges did not entail a danger to the health or safety of an individual or to the continued operation of the MLH hospitals.

Your client had been unsuccessful when it attempted to use the administrative due process procedure under the Bylaws to terminate his privileges, and so it has now improperly thrown Dr. Glunk's due process rights to the wind in this recent ex-parte and automatic termination of his privileges. The Bylaws afford Dr. Glunk the right to an administrative due process procedure before his privileges can be terminated, and we ask that you afford those rights to our client.

Very truly yours,

Marshall L. Grabois

Encl.
cc: Dr. Richard Glunk (w/ Encl.)
Doctor's Advocate (w/Encl.)

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
STATE BOARD OF MEDICINE

RECEIVED
DEC 28 2010
Department of State
Prothonotary

Commonwealth of Pennsylvania, :
Bureau of Professional and :
Occupational Affairs :

v. : Docket No. 1668-49-09

: File No. 07-49-09559

Richard P. Glunk, M.D. :
Respondent :

ORDER GRANTING TEMPORARY STAY

AND NOW, this 28th day of December, 2010, upon consideration of Respondent's Conditional Motion to Stay Suspension Pending Determination on Petition for Review, and Commonwealth's Response to Respondent's Motion to Stay Suspension Pending Determination on Petition for Review, filed in the above-captioned matter, it is hereby **ORDERED** that the Motion is **GRANTED in part**. The Adjudication and Order of the Hearing Examiner, filed on December 2, 2010, which constitutes the final decision in this matter, is **STAYED** for 30 days pending Respondent's filing of a Petition for Supersedeas in the Commonwealth Court of Pennsylvania.

BY ORDER:

Suzanne Rauer
Hearing Examiner

Respondent's Attorney:

Robert B. Hoffman, Esquire
ECKERT SEAMANS CHERIN
& MELLOTT, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101

Prosecuting Attorneys

Andrew E. Demarest, Esquire
David K. Grubb, Esquire
Commonwealth of Pennsylvania
GOVERNOR'S OFFICE OF GENERAL COUNSEL
Department of State
P.O. Box 2649
Harrisburg, PA 17105-2649

Date of Mailing: December 29, 2010

EXHIBIT B

Elliott Greenleaf
www.elliottgreenleaf.com

Elliott Greenleaf & Siedzikowski, P.C.
925 Harvest Drive
Blue Bell, Pennsylvania 19422
Phone: (215) 977-1000 • Fax: (215) 977-1099

Henry F. Siedzikowski, Esq.
Direct Dial: (215) 977-1038
E-Mail: hfs@elliottgreenleaf.com

January 11, 2011

Via First Class Mail and
Facsimile: 215-643-4533
Marshall L. Grabois, Esquire
Penna, Grabois & Associates, LLC
166 East Butler Avenue
Ambler, PA 19002

Re: Dr. Richard Glunk

Dear Mr. Grabois:

I am in receipt of your January 6, 2011 letter.

I am constrained to point you to the actual language of Section 4.E.2 of the Bylaws, which does not require an actual lapse in Dr. Glunk's license. The action by the State Board suspending his license was sufficient to trigger the automatic relinquishment of Dr. Glunk's privileges. There is no question that such action has occurred, no matter when Dr. Glunk's actual suspension starts (or even if it never does). Thus, the thirty-day stay you provided is irrelevant.

Also, Section 4.E.2 is automatic and does not trigger the Fair Hearing procedures. *See* Section 5.A.2.(d). Dr. Glunk received his due process in the state hearing leading up to the State Board's action. We are not required to retry that.

Finally, we disagree that those matters are not related to the public's health, safety and welfare. Indeed, it is troubling that your client does not recognize that the conduct described in the recent Superior Court Opinion, as well as that of the State Board of Medicine, have an adverse impact on patient health, safety and welfare.

Your client has been provided a full copy of the Bylaws, so you can read the actual provisions. If he has not provided them to you, let me know and I will provide you a copy.

Sincerely,

Henry F. Siedzikowski

HFS/mmy
cc: Main Line Health